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No. 432

In the Supreme Court of the United States

OCTOBER TERM, 1947

THE UNITED STATES OF AMERICA, PETITIONER

v.

TILLIE ZAZOVE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit entered in the above-entitled case on June 6, 1947.

OPINIONS BELOW

The opinion of the District Court of the United States for the Northern District of Illinois, Eastern Division (R. 6–7), is not reported. The majority and dissenting opinions of the United States Circuit Court of Appeals for the Seventh Circuit (R. 10–14) are reported at 162 F. 2d 443.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 6, 1947 (R. 15–16). A petition for rehearing, seasonably filed (R. 16), was denied on August 7, 1947 (R. 16–17).[1] The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

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[1] The filing of the petition for rehearing on July 7, 1947, was seasonable notwithstanding the fact that the order of the court below on its face extended the time for filing the petition only until July 6, 1947. The petition was mailed from Washington, D. C., on July 3, but could not be officially stamped as received until July 7, since the office of the Clerk of the Seventh Circuit was closed on July 6, which was a Sunday, as well as the two days preceding which were holidays. The Seventh Circuit has, by its Rule 29 (3), adopted Rule 6 (a) of the Federal Rules of Civil Procedure relating to the computation of time and providing in part that if the last day of any period prescribed or allowed by order of the court is a Sunday or a holiday, the period runs until the end of the next day which is neither a Sunday nor a holiday. Both the court below and counsel for the parties obviously read the order in light of Rule 6 (a), since no question in regard to filing was raised in the court below and the court did not dismiss the petition for tardy filing. Cf. *Texas & Pacific Railway Co.* v. *Murphy*, 111 U. S. 488. Consequently the later denial by the Circuit Court of Appeals of a motion to amend its order *nunc pro tunc* to read July 7 rather than July 6 is indicative of that court's understanding that the petition for rehearing was timely filed, and that the later motion was therefore unnecessary.

QUESTION PRESENTED

Whether, in computing the amount of the monthly installments to be paid to a beneficiary 30 or more years of age for 120 months certain, such payments to continue for the beneficiary's remaining lifetime in accordance with Section 602 (h) (2) of the National Service Life Insurance Act of 1940, the Veterans' Administration was required by the statute to disregard the beneficiary's life expectancy, to divide the face value of the policy plus interest by 120, the number of installments certain, and to pay the quotient so determined not only for the 120 months certain but also for the remaining lifetime of the beneficiary, where such disregard of life expectancy would require that, contrary to accepted actuarial principles, two, three, four or even five times the face value of the policy plus interest would be paid in most cases.

STATUTES AND REGULATION INVOLVED

The pertinent provisions of the National Service Life Insurance Act of 1940 (Part I, Title VI of the Second Revenue Act of 1940, Act of October 8, 1940, c. 757, 54 Stat. 974, 1008, 38 U. S. C. 801 *et seq.*) and of the 1944 and 1946 amendments thereto (Act of September 30, 1944, c. 454, 58 Stat. 762; Act of August 1, 1946, c. 728, 60 Stat. 781) are set forth in Appendix B, *infra*, pp. 30–40. Regulation 3450 of the Veterans' Administration, 6 Fed. Reg. 1162, 1166, 38 C. F. R. (Supp. 1941) 10.3450, is set forth in Appendix C, *infra*, pp. 41–42.

STATEMENT

On May 7, 1941, Adolph B. Schwartz, while on active military service, applied for and was granted a $5,000 policy of National Service Life Insurance in which respondent was designated as beneficiary and her relationship to the insured was stated to be that of an "aunt," whereas in fact she was not the insured's aunt. Upon his death in May 1943, the Veterans' Administration refused to pay respondent the benefits of the insurance policy on the ground that she was neither his aunt nor had stood *in loco parentis* to the insured, and hence was not an eligible beneficiary under Section 602 (g) of the National Service Life Insurance Act of 1940 as it then stood (54 Stat. 1008, 1010, 38 U. S. C. 802 (g)). Respondent accordingly brought suit on August 9, 1944, in the District Court of the United States for the Northern District of Illinois, Eastern Division, in accordance with Section 617 of the National Service Life Insurance Act of 1940 (38 U. S. C. 817, *infra*, pp. 34–35), to recover the insurance benefits as the designated beneficiary of the insured. A trial was had without a jury and the District Court then held that as a matter of law the *in loco parentis* relationship could not have existed and entered judgment against respondent. (R. 2–4.) On appeal, the Circuit Court of Appeals for the Seventh Circuit held as a matter of law that the relationship could and did exist. Accordingly, it re-

versed the District Court's judgment and remanded the cause for further proceedings. *Zasove* v. *United States*, 156 F. 2d 24.

On the remand the Veterans' Administration offered to pay respondent in accordance with its Regulation 3450 (*infra*, pp. 41–42). That Regulation contained a schedule of monthly installments to be paid under Section 602 (h) (2), *infra*, p. 30, which provided that insurance the beneficiary of which was 30 or more years of age should be paid "in equal monthly installments for one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary."[2] These payments were calculated in that Regulation on the basis of the American Experience Table of Mortality,[3] as required by

[2] Under this method of payment, the United States is obligated to pay at least 120 monthly installments. If the beneficiary lives beyond ten years (the period of guaranteed payments), he is entitled to receive monthly installments for his remaining lifetime. If he fails to live ten years, the unpaid guaranteed installments are paid to the next in line, usually the contingent beneficiary.

[3] This table was constructed in the year 1868 from the experience of the Mutual Life Insurance Company of New York during a period of about 20 years. It has four columns, showing for each age on the basis of 100,000 (1) number living, (2) number dying, (3) number dying per 1,000 (Rate of Mortality) and (4) expectation of life. Column (3) is the basic column and is used in making actuarial computations. Column (4) is, as are the other two columns, derived from column (3) and is, generally, merely another way of expressing the same concept. Although not used in life insurance computations, the term "expectation of life" is

Section 602 (e) of the Act (*infra*, p. 30), plus 3% interest per annum. In the case of respondent herein, who was 54 years of age at the death of the insured, the monthly installments amounted to $29.50, at the rate of $5.90 for each $1,000 of insurance. Respondent, however, claimed that Regulation 3450 was void and unauthorized. She contended that under Section 602 (h) (2) the full face value of the policy plus 3% interest per annum was to be paid in 120 equal monthly installments, or $9.613 per month for each $1,000 of insurance ($48.08 for the $5,000 policy of which respondent was the beneficiary), and that she was entitled to such monthly payments for her remaining lifetime.

The District Court rejected respondent's contention and held that she was entitled to monthly payments in the amount of $29.50 per month since May 12, 1943, for 120 month certain, which payments were to continue for the remaining of her natural life (R. 7). It also ordered the United States to pay respondent the unpaid installments which had already accrued (R. 7–8).

On appeal, the court below reversed the judgment of the District Court and remanded the cause for further proceedings on the ground that

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familiar to laymen, and hence we will use it here. For general discussion of the American Experience Table of Mortality, see MacLean, *Life Insurance* (5th ed., 1939) 83–88; Elston, *Sources and Characteristics of the Principal Mortality Tables* (2d ed., 1932) 60–62.

Regulation 3450 did not comply with Section 602 (h) (2) of the National Service Life Insurance Act of 1940. It held that that Section required the amount of the monthly installments to be paid to beneficiaries 30 or more years of age at the time of the death of the insured to be computed by dividing the face value of the policy plus 3% interest per annum by 120 without regard to the beneficiary's expectation of life at the insured's death (R. 11), and this despite the fact that the payments were to continue for the remainder of the beneficiary's life; that since the total of the 120 guaranteed payments, as computed by the Veterans' Administration, was not equal to the face value of the policy, plus interest, the insured's beneficiary did not receive what the insured had contracted for (R. 12); that Congress in the amendment of September 30, 1944, adding the refund life interest option[1] at the suggestion of the Veterans' Administration, did not thereby approve the construction of Section 602 (h) (2) contained in Regulation 3450 (R. 12–13); and that although these payments might in extreme cases require the Government to pay not only one but five times the face value of the

[1] Under this option, the sum of the guaranteed number of installments is equal to the face value of the contract. These installments continue for the remaining lifetime of the beneficiary, if he lives beyond the guaranteed period. The amount of each installment is, of course, lower than it would be under Regulation 3450.

policy, Congress, in its generosity to the beneficiaries of veterans, might have intended such a result (R. 12, 13). Judge Kerner dissented on the ground that respondent's contention "would do violence to the spirit, if not the letter of the statute" (R. 14).

SPECIFICATION OF ERRORS TO BE URGED

The circuit court of appeals erred:

1. In holding that Regulation 3450 set up a formula different from the one prescribed by Section 602 (h) (2) of the National Service Life Insurance Act of 1940.

2. In holding that Section 602 (h) (2) plainly and unambiguously required that the face value of the insurance plus 3% interest per annum was to be paid in equal monthly installments over a period of 120 months certain.

3. In holding that under Regulation 3450 the beneficiary who died before the expiration of 120 months did not receive what the insured had bargained for.

4. In holding that "nothing is said in the statute about equalizing" the face value of the policy plus interest over the life expectancy of the beneficiary.

5. In failing to hold that Congress by the 1944 amendment to the Act approved Regulation 3450.

6. In reversing the judgment of the district court.

REASONS FOR GRANTING THE WRIT

The court below, in a decision of unprecedented importance in the field of veterans' insurance, has held that Regulation 3450 of the Veterans' Administration contravenes Section 602 (h) (2) of the National Service Life Insurance Act of 1940 and has in effect construed that section as "plainly and unambiguously" imposing liabilities totally disproportionate to the premiums paid and beyond the ability of the National Life Insurance Fund ultimately to discharge. This holding ignores the plain meaning of the statutory method of settlement as understood in the field of commercial life insurance; violates fundamental actuarial principles; is inconsistent with other sections of the National Service Life Insurance Act of 1940; and disregards the consistent administrative construction by the Veterans' Administration of Section 602 (h) (2), which Congress in considering subsequent amendments to the Act indicated was in accord with its intention. Moreover, the decision below, by its violation of fundamental and universally accepted actuarial principles, increases the potential liabilities to be satisfied out of the National Service Life Insurance Fund by tens of billions of dollars in excess of the premiums paid in. Therefore, unless these billions are supplied by Congress, the Fund will ultimately be forced to default on its obligations. Accordingly, we submit that the de-

cision below presents a question of vital importance which should be reviewed by this Court.

1. *Regulation 3450 is valid.* a. Even if the language of Section 602 (h) (2) does not clearly connote to a layman that the beneficiary's life expectancy must be considered in computing the amount of the monthly installments, it is universally interpreted to have that meaning in commercial life insurance. Consequently it is in this technical sense that the statutory provision must be understood and interpreted. Cf. *Massachusetts Protective Ass'n* v. *United States*, 114 F. 2d 304, 311 (C. C. A. 1).

Commercial life insurance companies in computing the amount of the monthly installment under this general type of settlement (life annuity with guaranteed minimum number of payments), which is commonly offered and well understood, have uniformly considered the beneficiary's life expectancy, without question either by the courts or state insurance commissioners. This method of settlement was in commercial use in 1940, the year in which the National Service Life Insurance Act became law (see, e. g., *The Handy Guide to Standard and Special Contracts* (1940), pp. 294–296 (Equitable Life Assur. Society), 613, 614 (Metropolitan Life Ins. Co.), 766, 768 (New York Life Ins. Co.), 816 (Northwestern Mutual Life Ins. Co.), 1005 (Prudential Ins. Co. of America)), and has continued down to the present time (*ibid.* (1947), pp. 270–271, 273 (Equitable), 567, 568

(Metropolitan), 672, 673 (New York), 705, 707 (Northwestern), 843 (Prudential)).[5]

The inclusion of the beneficiary's life expectancy in the computation of the monthly installments is required by fundamental actuarial principles. A commercial insurance company, in obligating itself to pay the face value of the policy (with interest) in monthly installments, must consider the life expectancy of the beneficiary. The life expectancy of a young person is naturally greater than that of an older person, so that if approximately the same total amount is to be paid to each beneficiary, the amount of each installment must be greater for a person with a short life expectancy than for a person with a longer life expectancy. In addition, although it is unpredictable how long a

[5] The language of Section 602 (h) (2) is virtually identical with that of the similar options of the commercial insurance companies:

E. g., Equitable's option reads: "LIFE INCOME OPTION—Made payable in equal * * * monthly installments for ten or twenty years certain, with payments continuing during the remaining lifetime of the person upon whose life the income depends * * *."

Metropolitan's option reads: "(LIFE INCOME—10 YEARS CERTAIN).—By the payment of equal monthly payments * * * to the * * * beneficiary, * * * for a fixed period of 10 years and for so long thereafter as the payee shall survive, * * *."

New York's option reads: "LIFE INCOME WITH PAYMENTS GUARANTEED FOR A FIXED PERIOD:—The proceeds * * * may be made payable in equal * * * monthly installments for a fixed period of ten or twenty years, * * * and for the remaining lifetime of the payee, * * *."

particular individual will live, the life expectancy of a large group of persons of the same age is predictable. Consequently, the amount of the monthly installment is based upon the life expectancy of the group, and the company, by an averaging process, is assured that it will not on the average be called upon to pay more than the face value of the policy plus interest, since the losses sustained when one beneficiary lives beyond his life expectancy will be offset by the gains made when another dies prematurely.

Contrary to the belief of the court below, there is no injustice involved in so computing the monthly installments, even though some beneficiaries ultimately receive less than the full face value of the policy plus interest. The situation must be viewed at the time of the insured's death. At that time, the insured's contract for insurance matures, and the beneficiary is entitled to the face value of the policy. An annuity with 120 guaranteed payments is in effect established for the beneficiary and regardless of when the beneficiary dies, be it the next day, 10, 20, or 50 years thereafter, the complete obligation under the annuity is discharged so long as the first beneficiary receives monthly installments throughout his life time, and if, should the first beneficiary die prior to receiving the full number of guaranteed installments, the next in line receives the balance. In these circumstances, the beneficiary has received

the full benefits of the contract purchased for him by the insured.

If the beneficiary's life expectancy is ignored, as the court below held was required by Section 602(h)(2), and only the guaranteed minimum period is considered in computing the monthly installments, then payments equaling the full face value of the policy plus interest will be the minimum paid in each instance as a matter of course. However, in nearly all cases, the minimum guaranteed period is below the beneficiary's life expectancy and the beneficiaries will live beyond the minimum guaranteed period. Hence, more than the face value of the policy plus interest will have to be paid. But in this situation, there is no gain to draw on to offset the additional liabilities. A commercial insurance company, faced with such a ruling, would ultimately be forced to draw upon reserves held for other liabilities or default in its payments.

Moreover, under the ruling below, the beneficiary will receive more than his insured had contracted for, since if the monthly installments are calculated on the basis of the 120 guaranteed payments without regard to the beneficiary's life expectancy, then the actual value of the policy at the death of the insured is considerably in excess of the face value of the policy. As shown in Appendix A, *infra*, pp. 26–29, under the construction below, the actual value of the policy, based on the

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experience of the Veterans' Administration, ranges for $3232 for a female at the age of 10* to $1177 for a male at the age of 70 on each $1000 face value of the policy. In the case of respondent here, the actual value is $1947.

b. Other provisions of the Act make it clear that the Veterans' Administration was required, in calculating the schedule of monthly installments payable under Section 602 (h) (2), to consider the beneficiary's life expectancy.

(i) Section 602 (e) of the Act (Appendix B, *infra*, p. 30) provides that in addition to all premiums, "all cash, loan, paid up, and extended values, and all other calculations in connection with such insurance, shall be based upon said American Experience Table of Mortality * * *." The all-inclusive nature of the language here used plainly encompasses the calculations of monthly installments due to beneficiaries under Section 602 (h) (2), and hence required the Veterans' Administration to base its calculations of the monthly installments upon the American Experience Table of Mortality.

(ii) The maximum insurance issuable under the Act (Section 602 (q)) Appendix B, *infra*, p. 32) or in combination with United States Government Life Insurance (Section 603) (Appendix B,

* Under the 1946 amendment this option has been continued and the restriction of its availability to beneficiaries 30 or more years of age has been removed.

infra, p. 32) is expressly limited to $10,000. The Veterans' Administration has so limited the face value of all insurance issued by it under the Act, but as we have shown, *supra*, pp. 13–14, the actual value of every policy is greatly increased in excess of that limit under the construction below.

(iii) Section 605 (b) of the Act (Appendix B, *infra*, p. 33) authorizes the Administrator to set aside out of the National Service Life Insurance Fund "such reserve amounts as may be required under accepted actuarial principles, to meet all liabilities under such insurance." Under the ruling below, such reserves would be inadequate to meet all liabilities, since as we have shown, the actual payments made would in large number of cases exceed the face value of the policy and there would be no gains available to offset additional liabilities. If Congress intended the Veterans' Administration not to follow accepted actuarial principles in computing monthly installments under Section 602 (h) (2), so that its liabilities thereunder should not conform to accepted actuarial principles, it seems incongruous that Congress should have required that the reserves set up to meet these liabilities should be so computed.

(iv) Section 602 (h) (1) of the Act (Appendix B, *infra*, p. 30), which deals with the method of settlement to beneficiaries under 30 years of age at the time of the insured's death, provides for 240 payments certain and no more. There is no

room for any construction of that Section so that the beneficiaries would receive more than the face of the policy plus interest. If accepted actuarial principles are applied, the value of both the settlements would be the actuarial equivalent. Under the construction below, however, while the actual value of a policy to a beneficiary under 30 still equals the face value, the actual value of the policy to a beneficiary 30 or more would on the average be about double the face value.

Moreover, if, as Congress has indicated in the Act, the National Service Life Insurance Fund was in all respects, except those specifically enumerated (see *infra*, p. 23), to be self-supporting, the Veterans' Administration in establishing premium rates should have allowed for these additional payments to beneficiaries 30 or more years of age. The premiums as now set are adequate to meet liabilities equal to the face value of the policy. If, however, the premiums had been made larger, the insured whose beneficiary was under 30 would be making contributions to offset the losses to beneficiaries 30 or over. There is no way of setting premiums at different levels dependent on the age of the particular beneficiary at the death of the particular insured. All that can be done is set an average premium.

(v) These provisions support, we believe, the propriety of the Veterans' Administration's action in calculating the monthly installments due

to beneficiaries 30 years old or over, in accordance with the American Experience Table of Mortality, in order that the actual value of a policy at the time of the death of the insured be no more than the legal maximum face value of $10,000, that an adequate reserve could be set aside under accepted actuarial principles, and that the actual value of the policy not be influenced by the accident of whether the beneficiary was less or more than 30 years of age at the insured's death.

c. Regulation 3450 (Appendix C, *infra*, pp. 41–42) was issued on February 25, 1941, shortly after the National Service Life Insurance Act became law. 6 Fed. Reg. 1162, 1166, 38 C. F. R. (Supp. 1941) 10.3450. Since that time, the Veterans' Administration has followed that Regulation consistently and on the basis thereof has settled many thousands of claims aggregating about two billion dollars and has paid several hundreds of thousands of monthly installments. The Regulation has been adopted in connection with the 1946 amendment continuing this method of payment as one of four options. See *infra*, p. 39; Regulation 3479, 9 Fed. Reg. 13668–13669; 38 C. F. R. (Supp. 1944) 10.3479. This court has already recognized that the consistent administrative construction given insurance acts by the Veterans' Administration is entitled to great weight and "is not to be overturned unless clearly wrong, or unless a different construction is plainly required." *United*

States v. *Citizens Loan & Trust Co.*, 316 U. S. 209, 214; *United States* v. *Jackson*, 280 U. S. 183, 193. We have already shown that there is, at the very least, a thoroughly reasonable basis for the construction given Section 602 (h) (2). Hence, since that construction is not clearly wrong, the court below erred in setting it aside.

d. The legislative history of the 1944 and 1946 amendments to the Act, although subsequent to the maturity of respondent's claim, demonstrates, we believe, that Congress was aware of the construction given to Section 602 (h) (2) by the Veterans' Administration and agreed that that construction accorded with its intention. Cf. *Old Colony R. Co.* v. *Commissioner*, 284 U. S. 552, 557; *Johnson* v. *Manhattan Ry. Co.*, 289 U. S. 479, 500.[1]

(i) In 1944, the Administrator of the Veterans' Administration sent to Congress a proposed bill (S. 2015, 78th Cong., 2d sess.), accompanied by a letter, recommending certain amendments to the Act. It was referred to the Senate Committee on Finance, which adopted the Administrator's letter as its own report and recommended the passage

[1] There appears to be very little legislative history in connection with the Act. It was passed as Title VI of the Second Revenue Act of 1940, imposing excess profit taxes, and most of the Congressional discussion and comments on the Act deals with the excess profits tax. The only reference is contained in the House Conference Report where the provisions of the Act are summarized. H. Rep. 3002, 76th Cong., 3d sess., pp. 62–63.

of the bill without amendment. Sen. Rep. 1105, 78th Cong., 2d sess.; 90 Cong. Rec. 7983–7984. The bill was so passed. 90 Cong. Rec. 7984, 8138, 8153; Act of September 30, 1944, 58 Stat. 762, 763. Section 6 of the bill as enacted (Appendix B, *infra*, pp. 35–36) amended Section 602 (h) (2) by permitting the insured or his beneficiary to elect, in lieu of the life annuity with 120 payments certain, a "refund life income."* The Administrator's letter recommending the adoption of the alternative method of settlement pointed out that under Section 602 (h) (2) the total installments paid did not in all cases equal the face value of the policy and that, in extreme cases, hardship resulted. Sen. Rep. 1105, 78th Cong., 2d sess., p. 2. From this letter it also appeared that at least until the beneficiary was over 60 at the time of the death of the insured, the total guaranteed installments to be paid under the old method of settlement was below the face value of the policy (*ibid.*, p. 3). Congress was thus apprised of the construction placed on Section 602 (h) (2) by the Veterans' Administration. Since it knew of the construction given Section 602 (h) (2) by the Veterans' Administration, its failure to alter that Section of itself indicates that Congress acquiesced in that construction. Cf. *Old Colony R. Co.* v. *Commissioner*, 284 U. S. 552, 557; *Johnson* v. *Manhattan Ry. Co.*, 289 U. S. 479, 500.

* Section 5 (Appendix B, *infra*, p. 35) added a similar option to Section 602 (h) (1).

The addition of the alternative method of settlement, moreover, demonstrates that Congress not only acquiesced in that construction but affirmatively approved it. If Congress had intended that Section 602 (h) (2) be given the meaning adopted by the court below and intended that the full face value of the policy be paid in each instance, there would have been no necessity for adopting the alternative method of settlement. The adoption of the alternative method of settlement becomes reasonable only under the construction given by the Veterans' Administration since only then could less than the full face value of the policy be paid out to each beneficiary and the hardship discussed in the Administrator's letter and the Senate Report result. The court below failed to appreciate that fact when it put aside this legislative history as irrelevant (R. 12-13).

(ii) The legislative history of the 1946 amendment (Insurance Act of 1946, c. 728, 60 Stat. 781) similarly demonstrates that Congress approved of Regulation 3450. Section 8 of the House bill (H. R. 6371, 79th Cong., 2d sess.) again proposed to amend Section 602 (h) (2). It was recognized again, this time by the House Committee on World War Veterans' Legislation, that the aggregate amount of installments actually paid under the life annuity with 120 payments certain might in many instances amount to much less than the face of the policy (H. Rep. 2002, 79th Cong., 2d sess.,

p. 5). Moreover, the Committee recommended the addition of a new Section 602 (t) providing four optional methods of settlement for policies thereafter maturing: (1) lump sum, (2) in equal monthly installments of from 36 to 240 in number, in multiples of 12, (3) 120 payments certain, with payments continuing during beneficiary's remaining lifetime without regard to the age of the beneficiary at the insured's death, and (4) refund life income. It should be noted that the language of option (3) is identical with that contained in Section 602 (h) (2). And in connection with option (3) (and option (4)), the Committee recommended that firms, corporations, etc., should not be permitted to elect these options "because payments in such cases could not be based upon *the life of any individual* * * *" [italics supplied] (*ibid.*, pp. 6–7). The Senate Committee on Finance, although it amended H. R. 6371 by complete substitution, effected no pertinent changes in the sections with which we are here concerned.[9] That bill also recommended a new Section 602 (t), containing the same four optional settlements, and recommended the same restriction, and for the same reason, in regard to option (3) (and option (4)) as recommended by the House Committee. See Sen. Rep. 1705, 79th Cong., 2d sess., p. 6.

[9] It allowed additional time beyond that fixed in the House bill within which beneficiaries could select the refund life income. Section 5 of H. R. 6371 (Calendar 1740), 79th Cong., 2d sess.; Sen. Rep. 1705, 79th Cong., 2d sess., p. 4.

The continued inclusion of a life annuity with 120 payments certain as one of the new four optional settlements manifests, we believe, Congressional approval of the construction placed thereon by the Veterans' Administration. It is clear that the total payments under three methods of settlement, other than option (3), were not on the average to exceed the face value of the policy at the time of the insured's death. In light thereof, it would be unreasonable to attribute an intent to Congress to permit in option (3) a method of settlement which, on the construction below, would have an actual value at the death of the insured far in excess of its face value. If Congress did so intend, the other options become meaningless for all practical purposes, since it could reasonably be expected that option (3), because of its disproportionate value compared to the premiums paid and to the other options, would be selected in the vast majority of cases, particularly since the insured would be in a position to designate the youngest beneficiary possible consistent with his circumstances.

e. We have shown that the National Service Life Insurance Fund could not bear the additional costs resulting from the construction below of Section 602 (h) (2). The court below, however, attributed the additional costs which would be incurred under that construction to the generosity of Congress to veterans' beneficiaries (R. 13).

Apart from being inconsistent with the provisions of the Act already referred to, *supra*, pp. 14–17, this holding does not square with other provisions of the Act, in which Congress indicated the extent of its generosity. In the National Service Life Insurance Act of 1940, it is stated specifically which of the costs of the plan the United States would bear. Section 606 of the Act (Appendix B, *infra*, p. 33) provided that the United States would bear the cost of administration, and authorized the expenditure of moneys already appropriated therefor. Section 607 (a) of the Act (Appendix B, *infra*, p. 33) provided that the United States would bear the excess mortality cost and the cost of the waiver of premiums, and Sections 607 (b), (c) (Appendix B, *infra*, pp. 33–34) authorized the transfer of funds therefor from the National Service Life Insurance appropriation to the National Service Life Insurance Fund. These are the only costs which the House Conference Report on this Act (H. Rep. 3002, 76th Cong., 3d sess., p. 62) mentions as being assumed by the United States. And in the subsequent Appropriation Acts these were the sole specific liabilities for which appropriations were made. See, *e. g.*, Independent Offices Appropriation Act, 1945, Act of June 27, 1944, c. 286, 58 Stat. 361, 383. There is no similar assumption, or provision for payment of costs, of the additional liabilities which the Fund would have to bear under Section 602 (h) (2) as construed below.

2. *From a financial standpoint, this case is of vital importance to the Veterans' Administration and to the United States.* As appears in the letter from General Bradley, Veterans' Administrator, Appendix A, *infra,* pp. 26–29, if the decision below is not reversed, the liabilities of the National Service Life Insurance Fund would be increased by about 1.8 billions of dollars on policies which have already matured. Moreover, there are outstanding in full force and effect, policies bearing a face value totalling 35 billions of dollars. It is estimated by the Administrator (*infra,* p. 28) that if the decision below be allowed to stand, the actual value of these policies could reach an aggregate of 97 billions of dollars, an increase of 62 billions in excess of face value. It is further estimated (*infra,* pp. 28–29) that if ten per cent of the policies lapsed were reinstated, the increased liabilities in excess of the face value of the policy would be about 19.7 billion dollars, and in light of the disproportionate value of option (3), reinstatements in excess of ten percent may reasonably be anticipated.

The decision below, which requires the United States to assume such astronomically increased liabilities, is one which imperatively requires review by this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

NOVEMBER 1947.

APPENDIX A—LETTER FROM THE VETERANS' ADMINISTRATOR

VETERANS ADMINISTRATION,
Washington 25, D. C., October 24, 1947.

The Honorable PHILIP B. PERLMAN
The Solicitor General
The Department of Justice
Washington 25, D. C.

DEAR MR. SOLICITOR GENERAL: This is in response to your request for information as to the probable effect on National Service Life Insurance if payments thereunder are required to be made in accordance with the decision of the Seventh Circuit Court of Appeals in the case of *Zazove* vs. *The United States.*

If settlement is required to be made in this manner, each beneficiary of National Service Life Insurance who is entitled to receive payment under a life income with instalments guaranteed for 120 months, would receive $96.10 a month on a policy maturing by death for $10,000, irrespective of the age of the beneficiary at the death of the insured. It should be noted that for insurance maturing prior to August 1, 1946, this settlement was not available to beneficiaries under age 30 at the death of the insured, but for insurance maturing since that date it is available to all beneficiaries. Although age would not be a factor in determining the amount of the instalments, it would be a factor in determining the value of the in-

come as of the date of the insured's death, since that value depends in part upon the length of the time the beneficiary may be expected to live to receive the income, and that length of time decreases with age. It also varies as to whether the beneficiary is a man or a woman, being, on the average, longer for women than for men of the same age. The following table gives estimates of the value of the income for various ages, male, and female, as of the date of the insured's death.

Age of payee at death of insured	Value of $10.10 per month for life, 120 months certain	
	Male	Female
10	$31,572	$32,319
[illegible]	29,338	30,208
[illegible]	25,600	27,758
40	23,378	24,743
50	19,473	21,109
54	17,780	19,473
60	15,257	16,930
70	11,775	12,973

The values are based on the actual mortality of National Service Life Insurance beneficiaries under the life income optional settlements, with interest assumed at the rate of 3% a year.

On the approximately 2.1 billion dollars of death claims already incurred and now being settled under the life income with instalments guaranteed for 120 months, it is estimated that the additional liability that would result if settlement is required to be made as indicated in the Zazove opinion would amount to approximately 1.8 billion dollars, using the same assumptions as above.

In estimating the potential liability on policies now in force, and yet to mature, certain additional assumptions have to be made. For example, it is

not unlikely that most of those now carrying term insurance would convert to a permanent plan, such as Ordinary Life. Also, many of those having insurance on an endowment plan would probably attempt to convert to a whole life plan since the extraordinary values that would result from the settlement referred to could be realized only when a policy matures as a death claim, and not when it matures as an endowment. It is also necessary to make some assumptions as to the probable age and sex of the beneficiary at the death of the insured. Referring to the values shown above, it is apparent that the value of the income is greatest at the youngest ages and is greater for women than for men of the same age. Thus it might be expected that in order to derive the greatest value, most insureds would name a relatively young woman or a child as beneficiary. Assuming, then, that the insurance now in force, estimated at 35 billions, would all be held to mature at death and that the typical beneficiary would be a woman aged 30, say, at the death of the insured, and that all policies would be settled under the life income option with instalments guaranteed for 120 months, the potential liability might be about 97 billion dollars instead of 35 billion dollars, an increase of 62 billions. It should be pointed out that the increase would not all take place at once. It would be spread over many years as the policies matured one by one as death claims.

Another major consideration is the potential additional liability in respect to reinstatement of lapsed policies. It is impossible, of course, to foretell how much National Service Life Insur-

ance now lapsed would be reinstated. If 10% of all lapsed policies were reinstated, the potential additional liability would be about 19.7 billion dollars, on the basis of the assumptions already made. If some different percentage were reinstated, the potential additional liability would be in proportion.

Very truly yours,

[s] Omar N. Bradley

OMAR N. BRADLEY,
General, U. S. Army,
Administrator.

APPENDIX B—STATUTES INVOLVED

1. The National Service Life Insurance Act of 1940 (Part I, Title VI of the Second Revenue Act of 1940, Act of October 8, 1940, c. 757, 54 Stat. 974, 1008; 38 U. S. C. 801 *et seq.*) provides in pertinent part:

SEC. 602.

* * * * * *

(e) The premium rates for such insurance shall be the net rates based upon the American Experience Table of Mortality and interest at the rate of 3 per centum per annum. All cash, loan, paid up, and extended values, and all other calculations in connection with such insurance, shall be based upon said American Experience Table of Mortality and Interest at the rate of 3 per centum per annum.

* * * * * *

(h) Such insurance shall be payable in the following manner:

(1) If the beneficiary to whom payment is first made is under thirty years of age at the time of maturity, in two hundred and forty equal monthly installments.

(2) If the beneficiary to whom payment is first made is thirty or more years of age at the time of maturity, in equal monthly instalments for one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary.

* * * * * *

(m) The Administrator shall, by regulations, prescribe the time and method of payment of the premiums on such insurance, but payments of premiums in advance shall not be required for periods of more than one month each, and may at the election of the insured be deducted from his active service pay or be otherwise made.

(n) Upon application by the insured and under such regulations as the Administrator may promulgate, payment of premiums on such insurance may be waived during continuous total disability of the insured which commenced subsequent to the effective date of such insurance and which has existed for six consecutive months or more prior to the attainment by the insured of the age of sixty years, effective as of the due date of the monthly premium becoming payable on or after the first day of the seventh consecutive month of such disability: *Provided,* That application for waiver is made while the insurance is currently kept in force by the payment of premiums, and the insured furnishes proof satisfactory to the Administrator showing that he is and has been continuously totally disabled for six or more months prior to attaining sixty years of age. Any waiver granted by the Administrator under this subsection shall not become effective prior to the date of application therefor; except that, in the discretion of the Administrator, it may be made effective at any time within a period of not more than six months prior to such date but in no event prior to the first day of the seventh month of such continuous disability. Any premiums tendered to cover a period during which such waiver is effective shall be refunded. The

Administrator shall provide by regulations for reexaminations of beneficiaries under this subsection and, in the event that it is found that an insured is no longer totally disabled, the waiver of premiums shall cease as of the date of such finding and the policy of insurance may be continued by payment of premiums as provided in said policy. Premium rates shall be calculated without charge for the cost of the waiver of premiums herein provided and no deduction from benefits otherwise payable shall be made on account thereof.

* * * * *

(q) Such insurance shall be issued in any multiple of $500 and the amount of such insurance with respect to any one person shall be not less than $1,000 or more than $10,000.

SEC. 603. No person may carry a combined amount of National Service Life Insurance and United States Government life insurance in excess of $10,000 at any one time.

SEC. 604. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this part, to be known as the National Service Life Insurance appropriation, for the payment of liabilities under National Service Life Insurance. Payments from this appropriation shall be made upon and in accordance with awards by the Administrator.

SEC. 605. (a) There is hereby created in the Treasury a permanent trust fund to be known as the National Service Life Insurance Fund. All premiums paid on account of National Service Life Insurance

shall be deposited and covered into the Treasury to the credit of such fund, which, together with interest earned thereon, shall be available for the payment of liabilities under such insurance, including payment of dividends and refunds of unearned premiums. Payments from this fund shall be made upon and in accordance with awards by the Administrator.

(b) The Administrator is authorized to set aside out of such fund such reserve amounts as may be required under accepted actuarial principles, to meet all liabilities under such insurance; and the Secretary of the Treasury is hereby authorized to invest and reinvest such fund, or any part thereof, in interest-bearing obligations of the United States or in obligations guaranteed as to principal and interest by the United States, and to sell such obligations for the purposes of such fund.

SEC. 606. The United States shall bear the cost of administration in connection with this part, including expenses for medical examinations, printing and binding, and for such other expenditures as are necessary in the discretion of the Administrator. The appropriations made for the Veterans' Administration for the fiscal year 1941 for administrative expenses shall be available for the payment of such costs of administration under this part.

SEC. 607. (a) The United States shall bear the excess mortality cost and the cost of waiver of premiums on account of total disability traceable to the extra hazard of military or naval service, as such hazard may be determined by the Administrator.

(b) Whenever benefits under such insurance become payable because of the death

of the insured as the result of disease or injury traceable to the extra hazard of military or naval service, as such hazard may be determined by the Administrator, the liability for payment of such benefits shall be borne by the United States in an amount which, when added to the reserve of the policy at the time of death of the insured, will equal the then value of such benefits under such policy. The Administrator is authorized and directed to transfer from time to time from the National Service Life Insurance appropriation to the National Service Life Insurance Fund such sums as may be necessary to carry out the provisions of this section.

(c) Whenever the premiums under such insurance are waived as provided in section 602 (n) because of the total disability of the insured as the result of disease or injury traceable to the extra hazard of military or naval service, as such hazard may be determined by the Administrator, the premiums so waived shall be paid by the United States and the Administrator is authorized and directed to transfer from time to time an amount equal to the amount of such premiums from the National Service Life Insurance appropriation to the National Service Life Insurance Fund.

* * * * *

Sec. 617. In the event of a disagreement as to claim arising under this part, suit may be brought in the same manner and subject to the same conditions and limitations as are applicable to United States Government (converted) life insurance under the provisions of sections 19 and 500 of the World War Veterans' Act, 1924, as amended: *Provided,* That, in any such suit the

decision of the Administrator as to waiver or non-waiver of premiums under Section 602 (n) shall be conclusive and binding on the court.

2. The 1944 Amendment (Act of September 30, 1944, c. 454, 58 Stat. 762) to the National Service Life Insurance Act of 1940 provides in pertinent part:

> Sec. 5. Section 602 (h) (1) of the National Service Life Insurance Act of 1940 is hereby amended by substituting a colon for the period at the end thereof and adding the following: "*Provided*, That the Administrator, under regulations to be promulgated by him, may include a provision in the insurance contract authorizing the insured or the beneficiary to elect in lieu of this mode of payment, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of such beneficiary: *Provided further*, That such optional settlement shall not be available in any case in which payments of insurance installments have been commenced prior to the date of this amendatory Act."
>
> SEC. 6. Section 602 (h) (2) of the National Service Life Insurance Act of 1940 is hereby amended by substituting a colon for the period at the end thereof and adding the following: "*Provided*, That the Administrator, under regulations to be promulgated by him, may include a provision in the insurance contract authorizing the insured

or the beneficiary to elect, in lieu of this mode of payment, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract less any indebtedness with such payments continuing throughout the lifetime of such beneficiary: *Provided, further,* That such optional settlement shall not be available in any case in which such settlement would result in payments of installments over a shorter period than one hundred and twenty months, nor in any case in which payments of insurance installments have been commenced prior to the date of this amendatory Act."

3. The 1946 amendment (Act of August 1, 1946, c. 728, 60 Stat. 781) to the National Service Life Insurance Act of 1940 provides in pertinent parts:

SEC. 5. (a) So much of subsection (h) of section 602 of the National Service Life Insurance Act of 1940, as amended, as precedes paragraph (3) thereof is hereby amended to read as follows:

"(h) Insurance maturing prior to the date of enactment of the Insurance Act of 1946 shall be payable in the following manner:

"(1) If the beneficiary to whom payment is first made is under thirty years of age at the time of maturity, in two hundred and forty equal monthly installments: *Provided,* That the Administrator, under regulations to be promulgated by him, may include a provision in the insurance contract author-

izing the insured or the beneficiary to elect in lieu of this mode of payment and prior to the commencement of payments, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of such beneficiary: *Provided further,* That in any case in which insurance benefit payments were commenced prior to September 30, 1944, the beneficiary, whether or not the first beneficiary, shall have the right to elect to receive a refund life income, as provided in such optional settlement, payable in monthly installments adjusted as of the date of the maturity of such policy, credit being allowed for payments previously made on the insurance. The right of election with respect to cases in which benefit payments were commenced prior to September 30, 1944, shall terminate two years after the date of enactment of the Insurance Act of 1946. The Administrator is directed to send, within one year after the date of enactment of the Insurance Act of 1946, to each beneficiary of insurance on which payments were commenced prior to September 30, 1944, a notice explaining the right of election. Any such notice shall be sent by registered mail addressed to the last known address of the addressee.

"(2) If the beneficiary to whom payment is first made is thirty or more years of age at the time of maturity, in equal monthly installments for one hundred and twenty months certain, with such payments con-

tinuing during the remaining lifetime of such beneficiary: *Provided,* That the Administrator, under regulations to be promulgated by him, may include a provision in the insurance contract authorizing the insured or the beneficiary to elect, in lieu of this mode of payment and prior to the commencement of payments, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of such beneficiary: *Provided further,* That such optional settlement shall not be available in any case in which such settlement would result in payments of installments over a shorter period than one hundred and twenty months: *Provided further,* That in any case in which insurance benefit payments were commenced prior to September 30, 1944, the beneficiary, whether or not the first beneficiary, shall have the right to elect to receive a refund life income, as provided in such optional settlement, payable in monthly installments adjusted as of the date of the maturity of such policy, credit being allowed for payments previously made on the insurance. The right of election with respect to cases in which benefit payments were commenced prior to September 30, 1944, shall terminate two years after the date of enactment of the Insurance Act of 1946. The Adminstrator is directed to send, within one year after the date of enactment of the Insurance Act of 1946, to each beneficiary of insurance on

which payments were commenced prior to September 30, 1944, a notice explaining the right of election. Any such notice shall be sent by registered mail addressed to the last known address of the addressee."

* * * * *

SEC. 9. Section 602 of the National Service Life Insurance Act of 1940, as amended, is hereby amended by adding at the end thereof the following new subsections:

"(t) Insurance maturing on or subsequent to the date of enactment of the Insurance Act of 1946 shall be payable in accordance with the following optional modes of settlement:

"(1) In one sum.

"(2) In equal monthly installments of from thirty-six to two hundred and forty in number, in multiples of twelve.

"(3) In equal monthly installments for one hundred and twenty months certain with such payments continuing during the remaining lifetime of the first beneficiary.

"(4) As a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of the first beneficiary: *Provided,* That such optional settlement shall not be available in any case in which such settlement would result in payments of installments over a shorter period than one hundred and twenty months.

Unless the insured elects some other mode of settlement, the insurance shall be pay-

able to the designated beneficiary or beneficiaries in thirty-six equal monthly installments. The first beneficiary may elect to receive payment under any option which provides for payment over a longer period of time than the option elected by the insured, or if no option be designated by the insured, in excess of thirty-six months. If the option selected requires payment to any one beneficiary of monthly installments of less than $10, the amount payable to such beneficiary shall be paid in such maximum number of monthly installments as are a multiple of twelve as will provide a monthly installment of not less than $10. If the present value of the amount payable at the time any person initially becomes entitled to payment thereof is not sufficient to pay at least twelve monthly installments of not less than $10 each, such amount shall be payable in one sum. Options (3) and (4) shall not be available if any firm, corporation, legal entity (including the estate of the insured), or trustee is beneficiary, or in any case in which an endowment contract matures by reason of the completion of the endowment period.

* * * * *

APPENDIX C—REGULATION INVOLVED

Regulation 3450 of the Veterans' Administration, 6 Fed. Reg. 1162, 1166, 38 C. F. R. (Supp. 1941) 10.3450 provides:

> *Payment to first beneficiary.*—Upon due proof of the death of the insured while a National Service Life Insurance policy is in force, the monthly installments, without interest, which have accrued since the death of the insured (the first installment being due on the date of death of the insured) and the monthly installments which thereafter become payable in accordance with the provisions of the policy, shall be paid to the beneficiary or beneficiaries entitled in the following manner:
>
> (a) If the beneficiary to whom payment is first made is under thirty years of age at the time of the death of the insured, payment shall be made in 240 equal monthly installments at the rate of $5.51 for each $1,000 of such insurance.
>
> (b) If the beneficiary to whom payment is first made is thirty or more years of age at the time of the death of the insured, payment shall be made in equal monthly installments for 120 months certain, with such payment continuing throughout the remaining lifetime of such beneficiary. The amount of the monthly installment for each $1,000 of insurance shall be determined by the age of the beneficiary as of last birthday at the time of the death of the insured, in accordance with the following schedule based upon the American

Experience Table of Mortality and interest at the rate of 3 percentum per annum:

Age of beneficiary at date of death of insured	Amount of each monthly installment	Age of beneficiary at date of death of insured	Amount of each monthly installment
30	$3.97	58	$6.49
31	4.01	59	6.65
32	4.06	60	6.81
33	4.10	61	6.98
34	4.15	62	7.15
35	4.20	63	7.32
36	4.26	64	7.50
37	4.31	65	7.67
38	4.37	66	7.84
39	4.43	67	8.02
40	4.50	68	8.19
41	4.57	69	8.35
42	4.64	70	8.51
43	4.72	71	8.66
44	4.80	72	8.80
45	4.89	73	8.94
46	4.98	74	9.05
47	5.08	75	9.18
48	5.18	76	9.28
49	5.28	77	9.37
50	5.39	78	9.44
51	5.51	79	9.50
52	5.63	80	9.55
53	5.76	81	9.58
54	5.90	82	9.60
55	6.03	83	9.61
56	6.18	84	9.61
57	6.33	85	9.61